UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al.,	:	**CASE NO. 1:01cv00528**
	:	**(J. Spiegel, Mag. J. Sherman)**
Plaintiffs	:	
	:	
vs.	:	
	:	
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al.,	:	
	:	
Defendants	:	

MEMORANDUM OF DEFENDANT, CARL L. PARROTT, JR., M.D. INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS HAMILTON COUNTY CORONER, IN OPPOSITION TO PLAINTIFFS' MOTION TO CONSOLIDATE AND JOIN CLASS ACTION PROCEEDINGS

Defendant, Carl L. Parrott, Jr., M.D., individually and in his official capacity as Hamilton County Coroner, respectfully requests that the Court deny plaintiffs' Motion to Consolidate and Join Class Action Proceedings. At this point in the proceedings, and after defendants have filed Motions for Summary Judgment based upon, among other things, qualified immunity, it would be unfair, prejudicial, and contrary to law to allow such a consolidation.

The Hamilton County Defendants filed a Motion to Consolidate the above captioned case with the case of **Chesher, et al. v. Tom Neyer, Jr., et al.** on September 30, 2002. Plaintiffs opposed that motion in a pleading served October 24, 2002. In their Memorandum in Opposition to Defendants' Motion to Consolidate, **plaintiffs** made the following statement:

> **The actions which defendants seek to consolidate with this action involve a great deal more claimants than those within the instant action, seek class certification which is not being sought by plaintiffs in this action, have claimants who have different interests than plaintiffs herein, and seek dissimilar relief than that which is sought in this action. Indeed, the only thing in common between the other actions and this action is that one of the decedents of whom photographs were released by the morgue is the same as the one in this action. However, that is where the commonality starts and ends. (emphasis supplied).**

The Motion to Consolidate was ultimately denied by Magistrate Judge Sherman and this Court denied defendants' objections to the denial of the Motion to Consolidate in an Order dated February 25, 2003. As a result of the denial of the Motion to Consolidate, defendants were forced to attend depositions of Jonathan Tobias, Robert Pfalzgraf, Terry Daly, and Rhonda Gros in this case which had already been taken in the **Chesher** case. Now, after discovery has been concluded and Motions for Summary Judgment have been filed, plaintiffs attempt to reverse course to consolidate the actions. Their Motion should be denied.

An additional reason to deny plaintiffs' Motion to Consolidate is that plaintiff does not fit within the class definition approved by the Court in the **Chesher** case. Discovery in this case has revealed that the photograph of Ronald Melton was taken by Dr. Tobias in the regular course of his duties as coroner. No evidence exists that Thomas Condon accessed, manipulated, photographed, or in any other way came into contact with the body of Ronald Melton while it was in the morgue. On the contrary, as is set forth in the Motions for Summary Judgment,[1] Dr. Tobias testified that Thomas Condon was not present when he took the photographs of Ronald Melton and no evidence exists that Condon was in the morgue at the same time as Melton's body. As a result, plaintiffs in this action cannot fit within the class definition in **Chesher** and the cases should not be consolidated.

Based on the foregoing, Carl L. Parrott, Jr., M.D., individually and in his official capacity as Hamilton County Coroner, respectfully requests that this Court deny plaintiffs' Motion to Consolidate.

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[1]**See, e.g., pages 4 and 5 of this defendant's Motion for Summary Judgment.**

s/Lawrence E. Barbiere
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CERTIFICATE OF SERVICE

I hereby certify that on **February 11th , 2004,** I electronically filed the foregoing with the Clerk of the Court using the CM/ECFF system which will send notification to the following: David W. Kapor, Esq. and Michael B. Ganson, Esq., ***Attorneys for Plaintiffs,*** Jamie M. Ramsey, Esq., ***Attorney for Defendant, Hamilton County***, Glenn V. Whitaker, Esq., ***Attorney for Defendant, Jonathan Tobias***, and Stephen J. Patsfall, Esq., ***Attorney for Defendant, Thomas Condon.***

s/ Lawrence E. Barbiere
Lawrence E. Barbiere